

APPEAL NO. 030836  
FILED MAY 12, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing (CCH) was held on February 26, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable repetitive trauma injury in 1999 or 2000; that the date of injury (DOI) pursuant to Section 408.007, the date the claimant knew or should have known the disease may be related to the employment, was \_\_\_\_\_; that the claimant did not have disability from April 28, 2000, through the date of the hearing; and that respondent 2 (carrier 2) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify the employer pursuant to Section 409.001. The claimant appealed on sufficiency of the evidence grounds. Carrier 2 filed a response, urging affirmance. The appeal file does not contain a response from respondent 1 (carrier 1).

DECISION

Affirmed, as reformed.

The claimant had the burden to prove that she sustained a compensable injury, the DOI, that she gave timely notice of injury to the carrier, and that she has had disability. The claimant claimed that she sustained a repetitive trauma injury as a result of performing her work activities as a seamstress for the employer. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined in Section 401.011(36). Section 408.007 provides that the DOI for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. Section 409.001(a) provides that, if the injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Conflicting evidence was presented at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. We conclude that the hearing officer's determinations on the disputed issues are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W. 2d 175 (Tex. 1986).

We reform the decision of the hearing officer by striking the language relating to the extent-of-injury issue. Review of the record reflects that the parties withdrew the extent-of-injury issue; therefore, this issue was not before the hearing officer to resolve. The sentence "Claimant's (first date of injury), compensable injury does not include or

extend to include injuries to the cervical spine, left shoulder, or left arm” is struck from the Decision paragraph. Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer as reformed.

The hearing officer’s decision and order are affirmed, as reformed.

The true corporate name of insurance carrier 1 is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN  
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200  
IRVING, TEXAS 75063.**

The true corporate name of insurance carrier 2 is **OLD REPUBLIC GENERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN  
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200  
IRVING, TEXAS 75063.**

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Veronica Lopez  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Margaret L. Turner  
Appeals Judge